

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ODIS ODELL BERRY

Petitioner,

vs.

NATHANIEL QUARTERMAN, Director

Texas Department of Criminal Justice

Correctional Institutions Division

Respondent.

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No. 3-06-CV-0543-N

ORDER OF THE COURT ON THE FOREGOING RECOMMENDATION

Considering the record in this case and the above recommendation, and pursuant to Federal Rule of Appellate Procedure 22(b) and 28 U.S.C. § 2253 (c), the Court hereby finds and orders:

IFP STATUS:

- (X) the party appealing is GRANTED *in forma pauperis* status on appeal.
() the party appealing is proceeding *in forma pauperis*.
() the party appealing is DENIED *in forma pauperis* status on appeal
for the following reasons:

- () the Court certifies, pursuant to Fed. R. App. P. 24(a) and 28 U.S.C. § 1915 (a)(3), that the appeal is not taken in good faith. In support of this finding, the Court adopts and incorporates by reference the Magistrate Judge's Findings and Recommendation entered in this case on _____. Based upon the Magistrate Judge's findings, this Court finds that the appeal presents no legal points of arguable merit and is therefore frivolous. *See Harkins v. Roberts*, 935 F. Supp. 871, 873 (S. D. Miss. 1996) (citing *Howard v. King*, 707 F. 2d 215, 219-20 (5th Cir. 1983)).
- () the person appealing is not a pauper;
- () the person appealing has not complied with the requirements of Rule 24 of the Federal Rules of Appellate Procedure and /or 28 U.S.C. § 1915(a)(1) as ordered by the Court. (See Notice of Deficiency and Order entered on _____).

COA:

- () a Certificate of Appealability is GRANTED on the following issues: _____
- (X) a Certificate of Appealability is DENIED. The Court hereby adopts and incorporates by reference the Magistrate Judge's Findings and Recommendation filed in this case on June 7, 2006, which were adopted by the District Court on November 17, 2006, in support of its finding that Petitioner has failed to make a substantial showing that reasonable jurists could conclude that the habeas corpus petition is not barred by the statute of limitations. *See* 28 U.S.C. § 2244(d); *Slack v. McDaniel*, 529 U.S. 473, 120 S. Ct. 1595, 1602, 146 L. Ed .2d 542 (2000).

SIGNED this 2nd date of April, 2007.


UNITED STATES DISTRICT JUDGE